

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 997 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NASIRMAHMAD NOORMAHMAD SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner
MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

2. The petitioner challenges the order of preventive
detention dated 21st December, 1998 made by the
Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'bootlegger' within the meaning of Section 2 (b) of the Act. Three offences punishable under the Bombay Prohibition Act have been registered against the petitioner. In each of the said cases, the petitioner was found to be in possession of the country liquor. Besides, two individuals, on assurance of anonymity, have given statements in respect of the nefarious activities of the petitioner and its adverse effect on the public order. The witnesses have specifically referred to the incidents of 25th November, 1998 and 3rd December, 1998 respectively. In both the incidents, the petitioner is alleged to have beaten the concerned witness in a public place and to have used knife for issuing threats and to create terror amongst the innocent members of the public. The petitioner's activities are, therefore, believed to be detrimental to the maintenance of public order and injurious to public health.

4. It is contended that the petitioner had, under the representation dated 28th January, 1999 made by the learned advocate, requested for copy of the reports of the chemical examination of the liquor allegedly recovered from the petitioner. Inspite of the said request, such reports are not furnished to the petitioner. The petitioner is thus deprived of the vital documents, without which, the petitioner could not make an effective representation. The petitioner's constitutional right has been thus infringed. The continued detention of the petitioner is, therefore, vitiated.

5. It is not disputed that the reports of the chemical examination are vital documents and ought to have been considered by the detaining authority for recording his subjective satisfaction. Copies of such reports should also have been given to the petitioner alongwith the grounds of detention. This having not been done, the subjective satisfaction recorded by the detaining authority cannot be said to have been based on comprehensive materials and is, therefore, vitiated. It is not the case of the detaining authority that such reports were not ready or available on the date of the detention.

6. Petition is, therefore, allowed. The order dated

21st December, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless required to be detained in some other case, be released forthwith.

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Prakash*